

MONTANA DISASTER AND EMERGENCY SERVICES



LEGAL AUTHORITIES MANUAL



**TITLE 10,
CHAPTER 3,
PARTS 1 THROUGH 13,
MONTANA CODE ANNOTATED, 2005**

CHAPTER 3

DISASTER AND EMERGENCY SERVICES

Cross References:

Department of Military Affairs created, 2-15-1201.
Division of Disaster and Emergency Services created, 2-15-1204.
Closure of banks during emergency, 32-1-561, et seq.
Nuclear facilities -- evacuation and emergency medical aid plans, 75-20-1204.
Noxious weed emergency, 80-7-815.
Energy emergency laws to supplement civil defense laws, 90-4-317.
Western Interstate Nuclear Compact, Title 90, ch. 5, part 2.

Chapter Attorney General Opinions:

Grasshopper Spraying Program -- MEPA Exception: While an emergency situation is a legitimate exception to the requirements of the Montana Environmental Policy Act (MEPA), the Montana Department of Agriculture should in the future, comply with MEPA before participating in a grasshopper spraying program if the need for such a program is reasonably foreseeable. 42 A.G. Op. 62 (1988).

Indian Reservations: In an opinion issued before the 1977 amendment to 10-3-103, the Attorney General ruled that an Indian reservation, represented by a tribal council, is not a political subdivision of the state of Montana for purposes of receiving aid and assistance pursuant to the state civil defense law. 36 A.G. Op. 53 (1976).

Law Review Articles:

Section 1033 Ruled Applicable on Destruction of Principal Residence and Subsequent Sale of Land; Mortgage Interest Remains Deductible During a Reasonable Period Until Reconstruction Complete, Friedrich, 24 J. Real. Est. Tax'n 326 (1997).

Helping Hands: Aid for Natural Disaster Homeless vs. Aid for 'Ordinary Homeless', Sar, 7 Stan. L. & Pol'y Rev. 129 (1995).

Lawyering Your Municipality Through a Natural Disaster or Emergency, Nowadzky, 27 Urb. Law. 9 (1995).

Federal and State Coordination of Disaster Relief: A Survey of Administrative Law Schemes, 46 Admin. L. Rev. 539 (1994).

Governmental Negligence Liability Exposure in Disaster Management, Lerner, 23 Urb. Law. 333 (1991).

Dealing With the Tax Consequences of a Natural Disaster, Baldwin, Plunkett, & Herring, 170 J. Acct. 50 (1990).

FEMA: Its Mission, Its Partners, Giuffrida, 45 Pub. Admin. Rev. 2 (1985).

Collateral References:

53A Am. Jur. 2d Military and Civil Defense §§ 447 through 453.

Part 1

General Provisions and Administration

Part Compiler's Comments:

Severability: Section 20, Ch. 335, L. 1977, was a severability section.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense §§ 14, 447 through 453.

10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is declared to be necessary to:

- (1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;
- (2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters;
- (3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;
- (4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;
- (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;
- (6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;
- (8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;
- (9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and
- (10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations.

History: En. Sec. 2, Ch. 218, L. 1951; amd. Sec. 1, Ch. 220, L. 1953; Sec. 77-1302, R.C.M. 1947; amd. and redes. 77-2301 by Sec. 8, Ch. 94, L. 1974; amd. Sec. 2, Ch. 335, L. 1977; R.C.M. 1947, 77-2301; amd. Sec. 1, Ch. 71, L. 1987; amd. Sec. 1, Ch. 595, L. 1989.

Compiler's Comments:

1989 Amendment: Inserted (10) relating to payment of costs and hiring of personnel to provide assistance in cases of declared disasters; and made minor changes in phraseology.

1987 Amendment: Deleted former (3) that read: "(3) prepare for prompt and efficient search, rescue, recovery, care, and treatment of persons lost, entrapped, victimized, or threatened by emergencies or disasters".

Language From Model Act: The initial paragraph of this section parallels sec. 2, 1949 Model State Civil Defense Act, contained in the program for 1949 of Suggested State Legislation, Council of State Governments.

Cross References:

Legislative findings and intent concerning energy emergency, 90-4-301.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense §§ 14, 447.

10-3-102. Limitations. Nothing in parts 1 through 4 of this chapter may be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs; but any communications facility or organization (including but not limited to radio and television stations, wire services, and newspapers) may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster;

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and interjurisdictional disaster and emergency plans shall place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter.

History: En. 77-2301.2 by Sec. 3, Ch. 335, L. 1977; R.C.M. 1947, 77-2301.2.

Compiler's Comments:

Section Not Codified: Section 77-2301.1, R.C.M. 1947, designating Ch. 335, L. 1977, as the "Montana Disaster Act of 1977" has not been codified. However, it has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 335, L. 1977.

Cross References:

Civilian control of military, Art. II, sec. 32, Mont. Const.

Power of mayor to call out militia, 7-4-4303.

Authority of Governor to proclaim martial rule, 10-1-106.

Authority of principal executive officer, 10-3-406.

10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(7) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(8) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

History: En. Sec. 3, Ch. 218, L. 1951; amd. Sec. 2, Ch. 220, L. 1953; Sec. 77-1303, R.C.M. 1947; amd. and redes. 77-2302 by Sec. 9, Ch. 94, L. 1974; amd. Sec. 4, Ch. 335, L. 1977; R.C.M. 1947, 77-2302; amd. Sec. 4, Ch. 430, L. 1983; amd. Sec. 2, Ch. 71, L. 1987; amd. Sec. 1, Ch. 176, L. 1995; amd. Sec. 1, Ch. 391, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 391 in definition of disaster at end inserted "bioterrorism, or incidents involving weapons of mass destruction"; and made minor changes in style. Amendment effective April 17, 2003.

1995 Amendment: Chapter 176 inserted definition of incident; and made minor changes in style.

1987 Amendment: In definition of disaster and emergency services, after "means the", deleted "prevention of, the" and before "prepare for" substituted "mitigate" for "prevent"; and deleted former (9) that read: "(9) 'Search and rescue' means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress of, preserving life of, or removing survivors from the site of a hazard, emergency, or disaster to a place of safety in case of lost, stranded, entrapped, or injured persons."

1983 Amendment: In definition of disaster added "disruption of state services".

Attorney General Opinions:

"Political Subdivision" to Exclude Indian Reservation: An Indian reservation, represented by a tribal council, is not a political subdivision of the State of Montana for purposes of receiving aid and assistance pursuant to state civil defense law. 36 A.G. Op. 53 (1976).

10-3-104. General authority of governor. (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, the governor may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(1) thru (3); amd. Sec. 2, Ch. 176, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 176 in (2)(c) inserted "incident or"; and made minor changes in style.

Cross References:

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces -- when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's emergency powers and duties generally, 10-3-305.

Governor's proclamation of emergency, 10-3-505.

Closure of hunting and fishing during fire emergency, 87-3-106.

Powers of Governor during energy emergency, 90-4-309 through 90-4-318.

Governor to appoint Board members of Western Interstate Nuclear Compact, 90-5-202.

Attorney General Opinions:

School Transportation Not Reimbursable During Emergency: The authority of the Governor under this section to suspend the provisions of a regulatory statute during an emergency is discretionary. Therefore, when nothing in the Governor's executive order declaring a state of emergency specifically mentioned reimbursement for school transportation under 20-10-145, the state was not required to reimburse the costs for school bus transportation for districts closed in accordance with the declaration of emergency. 43 A.G. Op. 29 (1989).

Collateral References:

53A Am. Jur. 2d Military and Civil Defense §§ 31, 450.

10-3-105. Division of disaster and emergency services -- duties. (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor.

History: (1), (3), (4)En. Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R.C.M. 1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974; amd. Sec. 5, Ch. 335, L. 1977; Sec. 77-2303, R.C.M. 1947; R.C.M. 1947, 77-2303, 77-2305.1(part); amd. Sec. 5, Ch. 430, L. 1983; amd. Sec. 3, Ch. 176, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 176 in (4)(i), in two places, and in (4)(l) inserted references to an incident or incidents; and made minor changes in style.

1983 Amendment: In (4), deleted: "(h) determine the requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of an emergency or disaster;

(i) plan for the procurement of food, clothing, other necessities, supplies, medicines, materials, and equipment that may be necessary in the event of an emergency or disaster and, as funding is authorized, procure and pre-position the same;".

Cross References:

Department of Military Affairs created, 2-15-1201.
Division created, 2-15-1204.
Department power to authorize construction on federal land, 18-2-102.

Attorney General Opinions:

Designation of Fire Service Organization as First Responder to Hazardous Materials Incident: The designation of a fire service organization as first responder to a hazardous materials incident is a matter to be included in the state and local disaster and emergency plans. 42 A.G. Op. 104 (1988).

"Political Subdivision" to Exclude Indian Reservation: An Indian reservation, represented by a tribal council, is not a political subdivision of the State of Montana for purposes of receiving aid and assistance pursuant to state civil defense law. 36 A.G. Op. 53 (1976).

10-3-106. Communications. (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the department of administration and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the statewide telecommunications network.

History: En. 77-2307.4 by Sec. 12, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.4; amd. Sec. 36, Ch. 313, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 313 in (2) deleted reference to the division of communications; in (3) substituted "department of administration" for "division of communications"; in (4) at end substituted "statewide telecommunications network" for "state telecommunications system or network"; and made minor changes in style. Amendment effective July 1, 2001.

Cross References:

State government information technology and internet privacy, Title 2, ch. 17, part 5.
Cooperation with local government, 10-3-107, 10-3-202.
Cooperation with other agencies, 10-3-201.

10-3-107. National defense highway plans. The department of military affairs shall:

(1) cooperate with the agencies of this and other states and of the federal government which are connected with national defense in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense;

(2) coordinate the activities of the department of transportation and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials;

(3) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans.

History: (1)En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953; amd. Sec. 1, Ch. 94, L. 1974; Sec. 32-1702, R.C.M. 1947; (2)En. Sec. 3, Ch. 82, L. 1941; amd. Sec. 4, Ch. 94, L. 1953; amd. Sec. 2, Ch. 94, L. 1974; Sec. 32-1703, R.C.M. 1947; R.C.M. 1947, 32-1702, 32-1703; amd. Sec. 6, Ch. 430, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments:

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: Renumbered former (a), referring to cooperation to make and execute plans for troop, vehicle, and materials movement over highways, as (1) and (b), referring to coordination of activities of Departments of Highways and Justice, as (2); at end deleted: "as referred to in subsection (1)

of this section;

(c) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans;

(d) have the authority to take an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense.

(2) The department of military affairs may, in conjunction with any interested public or private agencies, conduct a highway safety and driver training program as an aid to the national defense."; and inserted (3) referring to cooperation of officials of political subdivisions.

Cross References:

Highway traffic safety program, Title 61, ch. 2, part 1.

10-3-108 through 10-3-110 reserved.

10-3-111. Personnel immune from liability. (1) The state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense worker or member of an agency engaged in civilian defense activity during an incident, disaster, or emergency. This section does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an act of congress.

(2) The state or a political subdivision of the state or, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or a political subdivision of the state or a volunteer or auxiliary civilian defense worker or member of an agency engaged in civilian defense activity during an incident, disaster, or emergency or the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state, are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection.

History: En. Sec. 10, Ch. 218, L. 1951; Sec. 77-1310, R.C.M. 1947; amd. and redes. 77-2308 by Sec. 15, Ch. 94, L. 1974; rep. Sec. 15, Ch. 49, L. 1977; re-en. Sec. 2, Ch. 73, L. 1977; R.C.M. 1947, 77-2308; amd. Sec. 4, Ch. 176, L. 1995; amd. Sec. 1, Ch. 520, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 520 at end of (2) in two places inserted reference to part 12; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 176 in first sentence of (1) and in (2) inserted "incident" and substituted "emergency" for "catastrophe"; and made minor changes in style.

Section Purportedly Repealed: Section 15, Ch. 49, L. 1977, purported to repeal section 77-2308, R.C.M. 1947. However, the Code Commissioner has determined that the section, as reenacted and amended by Ch. 73, L. 1977, should appear in the MCA.

Language From Model Act: The language of this section parallels that of sec. 10, 1949 Model State Civil Defense Act, contained in the program for 1949 of Suggested State Legislation, Council of State Governments.

Cross References:

Liability of governmental entities generally, Title 2, ch. 9.

Immunity from liability, 10-1-111.

Attorney fees for militia members, 10-1-601.

Limitations on liability for emergency care, 27-1-714.

Limitations on liability of health professionals for emergency care, 41-1-405.

Law Review Articles:

Governmental Negligence Liability Exposure in Disaster Management, Lerner, 23 Urb. Law. 333 (1991).

Tortfeasor Liability for Disaster Response Costs: Accounting for the True Cost of Accidents, McIntyre, 55 Fordham L. Rev. (1987).

Collateral References:

53A Am. Jur. 2d Military and Civil Defense § 451.
Official immunity of state national guard members. 52 ALR 4th 1095.

10-3-112. Employment requirements for personnel -- political involvement of organizations prohibited. (1) A person may not be employed in any disaster and emergency services organization established under parts 1 through 4 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I ..., swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

(2) An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes.

History: (1)En. Sec. 13, Ch. 218, L. 1951; Sec. 77-1313, R.C.M. 1947; amd. and redes. 77-2311 by Sec. 18, Ch. 94, L. 1974; amd. Sec. 15, Ch. 335, L. 1977; Sec. 77-2311, R.C.M. 1947; (2)En. Sec. 12, Ch. 218, L. 1951; Sec. 77-1312, R.C.M. 1947; amd. and redes. 77-2310 by Sec. 17, Ch. 94, L. 1974; amd. Sec. 14, Ch. 335, L. 1977; Sec. 77-2310, R.C.M. 1947; R.C.M. 1947, 77-2310, 77-2311.

Compiler's Comments:

Language From Model Act: The language of this section parallels that of sec. 14, 1949 Model State Civil Defense Act, contained in the program for 1949 of Suggested State Legislation, Council of State Governments.

Cross References:

Oath of officers, 10-1-202.
Oath of enlistment, 10-1-302.
Discrimination by state, 49-2-308.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense § 452.

10-3-113. Identification -- civil defense symbol. Disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

History: En. 77-2315 by Sec. 19, Ch. 335, L. 1977; R.C.M. 1947, 77-2315.

Cross References:

Civil defense defined, 10-3-103.

Part 2

Intergovernmental Cooperation

Part Compiler's Comments:

Text From Model Act: The text of the Interstate Civil Defense and Disaster Compact (repealed in 1985) was developed by the Northeastern Interstate Committee on Civil Defense of the Council of State Governments, with the assistance and cooperation of the Civil Defense Office of the National Security Resources Board, and appears in the program for 1953 of Suggested State Legislation, pp. 25 through 27, Council of State Governments, with amendments appearing in Vol. XXXIII, Suggested State Legislation, pp. 237 and 238 (1974).

Severability: Section 20, Ch. 335, L. 1977, was a severability section.

Cross References:

Emergency Management Assistance Compact, Title 10, ch. 3, part 10.

Law Review Articles:

Lawyering Your Municipality Through a Natural Disaster or Emergency. (Symposium: Coping With Chaos--Disaster Planning), Nowadzky, 27 Urb. Law. 9 (1995).

10-3-201. Local and interjurisdictional emergency and disaster agencies and services. (1) Each political subdivision within this state shall designate a local or interjurisdictional agency responsible for emergency and disaster prevention and preparedness and coordination of response and recovery.

(2) The local or interjurisdictional disaster and emergency services agency shall receive assistance from the division in emergency and disaster prevention, preparedness, response, and recovery to the extent of the division's authority and responsibility.

(3) Each political subdivision shall adhere to the provisions of parts 1 through 4 of this chapter and the state disaster and emergency plan and program regarding the structure and responsibilities of the local or interjurisdictional disaster and emergency service agencies and their relationship to the division.

(4) The principal executive officer of each political subdivision shall notify the division of the manner by which the political subdivision is providing or securing emergency and disaster planning and services, identify the person who heads the agency from which planning and services are obtained, and furnish additional information as the division requires.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(1) thru (4).

Cross References:

Interlocal agreements, Title 7, ch. 11, part 1.

Authority of principal executive officer, 10-3-406.

Attorney General Opinions:

County Commissioner and County Coordinator of Disaster and Emergency Services Incompatible -- Positions Not to Be Held Simultaneously: The Board of County Commissioners has the power of supervision, revision, and removal over the position of county coordinator of disaster and emergency services. Therefore, under the common-law doctrine of incompatible public offices, the office of County Commissioner and the position of county coordinator of disaster and emergency services are incompatible and one person may not hold both jobs simultaneously. 46 A.G. Op. 26 (1996).

10-3-202. Mutual aid -- cooperation. (1) Political subdivisions, fire districts, fire service areas, and fire companies in unincorporated places must be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state for reciprocal aid and assistance in coping with incidents, emergencies, and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions of adjoining states and shall carry out arrangements of any of the agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross. Parts 1 through 4 of this chapter do not list or in any way affect the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended.

History: (1) thru (3) En. Sec. 8, Ch. 218, L. 1951; Sec. 77-1308, R.C.M. 1947; amd. and redes. 77-2306 by Sec. 13, Ch. 94, L. 1974; amd. Sec. 13, Ch. 49, L. 1977; amd. Sec. 10, Ch. 335, L. 1977; Sec. 77-2306, R.C.M. 1947; (4) En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; R.C.M. 1947, 77-2305.1(5), 77-2306; amd. Sec. 7, Ch. 46, L. 1997.

Compiler's Comments:

1997 Amendment: Chapter 46 in (1), at beginning after "subdivisions", inserted "fire districts, fire service areas, and fire companies in unincorporated places" and near end, before "emergencies", inserted "incidents"; and made minor changes in style.

Cross References:

Authority of fire district trustees to conclude mutual aid agreements, 7-33-2108.

Authority of county governing body to conclude mutual aid agreements, 7-33-2202.

Authority of governing body of fire service area to conclude mutual aid agreements, 7-33-2405.

Authority of municipalities to conclude mutual aid agreements, 7-33-4112.

State disaster and emergency plan, 10-3-301.

10-3-203. Acceptance of services, gifts, grants, and loans. (1) Whenever the federal government or any agency or officer of the federal government offers to the state, or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, reimbursement of mutual aid, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer. Upon the acceptance, the governor of the state or the executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision to receive the services, equipment, supplies, materials, or funds on behalf of the state or political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1) or to the department of natural resources and conservation for fire suppression purposes or costs.

History: En. Sec. 11, Ch. 218, L. 1951; Sec. 77-1311, R.C.M. 1947; amd. and redes. 77-2309 by Sec. 16, Ch. 94, L. 1974; amd. Sec. 13, Ch. 335, L. 1977; R.C.M. 1947, 77-2309; amd. Sec. 6, Ch. 703, L. 1985; amd. Sec. 4, Ch. 389, L. 1999; amd. Sec. 1, Ch. 426, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 426 in (1) near middle of first sentence after "grant" inserted "reimbursement of mutual aid"; in (2) at end after "subsection (1)" inserted "or to the department of natural resources and conservation for fire suppression purposes or costs"; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 389 in (1) near beginning after "officer of the federal government" deleted "or any person, firm, or corporation"; and made minor changes in style. Amendment effective July 1, 1999.

1985 Amendment: Inserted (2) creating statutory appropriation.

Language From Model Act: The language of this section (prior to 1985 amendment) parallels that of

sec. 11(b), 1949 Model State Civil Defense Act, contained in the program for 1949 of Suggested State Legislation, Council of State Governments.

Cross References:

Governor authorized to accept funds -- designation of state agency, 17-3-105.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense § 447.

10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate mutual aid compact with all states, as defined therein, which states have enacted or shall hereafter enact the compact in the form substantially contained in 10-3-207.

(2) The governor may enter into the compact with any state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) Nothing in subsections (1) and (2) may be construed to limit previous or future entry of this state into the interstate mutual aid compact.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

History: En. 77-2307.3 by Sec. 11, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.3; amd. Sec. 1, Ch. 228, L. 1985.

Compiler's Comments:

1985 Amendment: In (1), (3), and (4) substituted reference to interstate mutual aid compact for interstate civil defense and disaster compact; at end of (1) substituted reference to 10-3-207 for 10-3-206; and near beginning of (2) after "with any state", deleted "that does not border this state".

Collateral References:

81A C.J.S. States § 31.

72 Am. Jur. 2d States § 5.

10-3-205. Authority to join interstate mutual aid compact -- supplemental agreements. (1) The governor of the state of Montana is hereby authorized for and in the name of the state of Montana to join with other states in the interstate mutual aid compact.

(2) The governor of the state of Montana is hereby authorized to negotiate and execute such supplemental agreements as may be necessary and proper to fully carry into effect the terms and provisions of the interstate mutual aid compact as set forth in 10-3-207.

History: (1)En. Sec. 2, Ch. 213, L. 1951; Sec. 77-1402, R.C.M. 1947; (2)En. Sec. 4, Ch. 213, L. 1951; Sec. 77-1404, R.C.M. 1947; R.C.M. 1947, 77-1402, 77-1404; amd. Sec. 2, Ch. 228, L. 1985.

Compiler's Comments:

1985 Amendment: In (1) and (2) substituted reference to interstate mutual aid compact for interstate civil defense and disaster compact; at end of (1) deleted "as developed by the civil defense office of the national security and resources board and the council of state governments"; and at end of (2) substituted reference to 10-3-207 for 10-3-206.

Collateral References:

81A C.J.S. States § 31.

72 Am. Jur. 2d States § 5.

10-3-206. Repealed. Sec. 5, Ch. 228, L. 1985.

History: En. Sec. 3, Ch. 213, L. 1951; R.C.M. 1947, 77-1403.

10-3-207. Text of compact. The interstate mutual aid compact referred to in 10-3-204 and 10-3-205 reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 (now repealed) and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing in this arrangement may be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by such state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal.

History: En. Sec. 3, Ch. 228, L. 1985; amd. Sec. 43, Ch. 42, L. 1997.

Compiler's Comments:

1997 Amendment: Chapter 42 in Article II, in second sentence after "50 U.S.C. 2281(g) and 2283", inserted "(now repealed)". Amendment effective March 12, 1997.

10-3-208. Rulemaking authority. The department of military affairs may adopt rules necessary to implement the interstate mutual aid compact.

History: En. Sec. 4, Ch. 228, L. 1985.

Compiler's Comments:

Statement of Intent: The statement of intent attached to Ch. 228, L. 1985, provided: "It is the intent of this bill to allow the governor to enter into interstate mutual aid agreements with other states for the purposes of:

- (1) providing state resources such as manpower, equipment, and material; and
- (2) coordinating the provision of volunteer resources to assist other states in response and recovery activities relating to earthquakes, floods, and other disasters.

The governor shall enter these agreements and shall provide for their implementation, including the appointment of contact persons within this state and establishment of a contact procedure with participating states.

Although the governor is charged with implementation of this bill, he may delegate authority to the department of military affairs or other appropriate agency for day-to-day administration of the compact."

Cross References:

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules:

Most Rules Not Published: The Department of Military Affairs and its component organizations adopt regulations, orders, and operating procedures that are not published in the Administrative Rules of Montana. Due to the exemptions contained in 2-3-102 and 2-4-102, such publication is not required except for the purposes of 10-1-121. Unpublished records and documents are available in accordance with Department policy and state and federal law and regulations.

10-3-209. Political subdivision requests for assistance -- application to fire districts, fire service areas, and fire companies in unincorporated places -- immunity. (1) If an incident, emergency, or disaster occurs in a political subdivision that has not concluded a mutual aid agreement pursuant to 10-3-202, the local or interjurisdictional agency, incident commander, or principal executive officer of the political subdivision may request assistance from another public or private agency.

(2) (a) The following individuals or entities may request assistance with an incident, emergency, or disaster if a mutual aid agreement has not been concluded for protection of the area within the jurisdiction of these individuals or entities:

(i) the trustees of a rural fire district created pursuant to Title 7, chapter 33, part 21, a representative of the trustees, or an incident commander for the district;

(ii) the chief of a rural fire company organized pursuant to 7-33-2311 or an incident commander for the chief;

(iii) the governing body of a fire service area created pursuant to Title 7, chapter 33, part 24, a representative of the governing body, or an incident commander for the area.

(b) A request for assistance by an individual or entity under subsection (2)(a) may be made to any of the following:

(i) a fire district;

(ii) an unincorporated municipality;

(iii) an incorporated municipality;

(iv) a state agency;

(v) a private fire prevention agency;

(vi) an agency of the federal government;

(vii) a fire service area; or

(viii) the governing body of a political subdivision.

(3) A public or private agency receiving a request pursuant to subsection (1) or (2) shall determine if it will provide the requested assistance, or will provide other assistance, and shall inform the requesting local or interjurisdictional agency, principal executive officer, incident commander, or other individual or entity making the request, as soon as possible, of that determination. The nature and extent of assistance provided by a public or private agency may be determined only by that public or private agency.

(4) The incident commander of the local or interjurisdictional agency making a request for assistance has overall responsibility for command of the resources provided by a public or private agency responding to a request. However, operational control of individual pieces of equipment and personnel furnished by the responding public or private agency remains with that agency.

(5) This section does not waive an immunity or limitation on liability applicable to any of the following entities or individuals requesting or receiving assistance pursuant to this section:

(a) a fire district;

(b) a fire service area;

(c) a fire company;

(d) an unincorporated municipality, town, or village;

(e) a political subdivision; or

(f) an agent, employee, representative, or volunteer of an entity listed in this subsection.

History: En. Sec. 8, Ch. 46, L. 1997.

Cross References:

State subject to suit, Art. II, sec. 18, Mont. Const.

Liability exposure and insurance coverage, Title 2, ch. 9.

Limit on liability of local governments, 7-1-4125.

Authority of fire district trustees to conclude mutual aid agreements, 7-33-2108.

Authority of county governing body to conclude mutual aid agreements, 7-33-2202.

Immunity of fire officials, 7-33-2208.

Authority of governing body of fire service area to conclude mutual aid agreements, 7-33-2405.

Authority of municipalities to conclude mutual aid agreements, 7-33-4112.

Limitation on liability for delay in receipt or transmittal of fire report, 7-33-4114.

Immunity of National Guard, 10-1-111.

Part 3

State Planning and Execution

Part Compiler's Comments:

Severability: Section 20, Ch. 335, L. 1977, was a severability section.

Law Review Articles:

Symposium: Coping With Chaos--Disaster Planning, Fleming, 27 Urb. Law. 3 (1995).

10-3-301. State disaster and emergency plan. (1) The state disaster and emergency plan and program may provide for:

- (a) prevention and minimization of injury and damage caused by disaster;
- (b) prompt and efficient response to an incident, emergency, or disaster;
- (c) emergency relief;
- (d) identification of areas particularly vulnerable to disasters;
- (e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (f) organization of personnel and chains of command;
- (g) coordination of federal, state, and local disaster and emergency activities; and
- (h) other necessary matters.

(2) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

History: En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part); amd. Sec. 7, Ch. 430, L. 1983; amd. Sec. 5, Ch. 176, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 176 in (1)(b) inserted "incident"; and made minor changes in style.

1983 Amendment: In (2), substituted "the division may seek the advice" for "the division shall seek the advice"; and substituted "the division may encourage" for "the division shall encourage".

Cross References:

Emergency resource management plan, 10-3-504.

Energy supply emergencies -- energy curtailment required, 90-4-307.

10-3-302. Declaration of emergency -- effect and termination. (1) A state of emergency may be declared by the governor when he determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency shall activate the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which shall be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(4).

Cross References:

Authorization to transfer county funds for emergency relief, 7-31-2101.
Emergency powers of Governor generally, 10-3-104.
Proclamation of emergency, 10-3-505.
Power of Governor to declare emergency, 90-4-310.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense §§ 449, 450.

10-3-303. Declaration of disaster -- effect and termination. (1) A state of disaster may be declared by the governor when he determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster shall activate the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution.

However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(5), (6).

Cross References:

Authorization to transfer county funds for emergency relief, 7-31-2101.
Proclamation of emergency, 10-3-505.

10-3-304. Dissemination. An executive order or proclamation issued under this part shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(7).

10-3-305. Governor commander-in-chief -- duties. (1) During an incident and during a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for incident, emergency, or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

(2) The governor shall use the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out of the purposes of parts 1 through 4 of this chapter.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(8), (9); amd. Sec. 6, Ch. 176, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 176 in (1) inserted two references to an incident; and made minor changes in style.

Cross References:

Civilian control of military, Art. II, sec. 32, Mont. Const.

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Emergency powers of Governor generally, 10-3-104.

Collateral References:

57 C.J.S. Militia § 21.

53A Am. Jur. 2d Military and Civil Defense § 450.

10-3-306 through 10-3-309 reserved.

10-3-310. Incident response -- authority -- appropriation -- expenditures -- recovery -- rules. (1)

The governor may by executive order upon request of the local governing body or its authorized agent activate that part of the state disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) Upon approval of an executive order pursuant to this section:

(a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed \$10,000 per incident and not to exceed \$100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and may not be used to reimburse a local government for incident response costs incurred by that local government.

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section.

History: En. Sec. 8, Ch. 176, L. 1995.

10-3-311. Emergency or disaster expenditures -- restrictions. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;
(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) No expenditures for flood-related damages may be made to assist a political subdivision that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 CFR, and does not have in effect adequate regulations for such areas or has failed to enforce such regulations as required by the national flood insurance program.

(3) The governor is charged with the implementation of the program.

(4) The administration and development of rules for implementation of this section must be promulgated by the department.

History: (1)En. Sec. 1, Ch. 409, L. 1971; amd. Sec. 19, Ch. 577, L. 1977; Sec. 79-2501, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 409, L. 1971; Sec. 79-2503, R.C.M. 1947; R.C.M. 1947, 79-2501, 79-2503; amd. Sec. 1, Ch. 216, L. 1981; amd. Sec. 8, Ch. 430, L. 1983; amd. Sec. 1, Ch. 111, L. 1985; amd. Sec. 3, Ch. 71, L. 1987.

Compiler's Comments:

1987 Amendment: Inserted (2) prohibiting payments for flood-related damages to political subdivisions that have been sanctioned under national flood insurance programs.

1985 Amendment: At end of (3) after "department", deleted "of administration".

Statement of Intent: The statement of intent attached to Ch. 111, L. 1985, provided: "A statement of intent is required for this bill because it transfers rulemaking authority from the department of administration to the department of military affairs. It is the intent of the legislature that in developing rules under this act, the department of military affairs look to the rules of the department of administration under 10-3-311, MCA, so that affected political jurisdictions are assured of some continuity in the administration of disaster and emergency relief."

1983 Amendment: In middle of first paragraph of (1), substituted "to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings" for "to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods, or other acts of God resulting in damage or disaster to the works, buildings".

1981 Amendment: Inserted "in the affected fund" in (1)(b).

Severability: Section 20, Ch. 577, L. 1977, was a severability section.

Temporary Law: The term "energy emergencies" was added to this section by sec. 19, Ch. 577, L. 1977, and was terminated by sec. 21, Ch. 577, L. 1977, on March 1, 1979. Similar language was inserted into sec. 18, Ch. 473, L. 1979, now codified as 90-4-318.

Cross References:

Adoption and publication of rules, Title 2, ch. 4, part 3.

Authorization to transfer county funds for emergency relief, 7-31-2101.

Levying of emergency taxes by city and county, 10-3-405.

Adoption and levy of emergency budget by school district trustees, 20-9-161 through 20-9-166.

Energy emergency expenditures authorized, 90-4-318.

Administrative Rules:

Title 34, chapter 3, ARM Emergency and disaster relief.

Title 34, chapter 3, subchapter 1, ARM Emergency and disaster relief.

Title 34, chapter 3, subchapter 2, ARM State participation in federal assistance programs.

Most Rules Not Published: The Department of Military Affairs and its component organizations adopt regulations, orders, and operating procedures that are not published in the Administrative Rules of Montana. Due to the exemptions contained in 2-3-102 and 2-4-102, such publication is not required except for the purposes of 10-1-121. Unpublished records and documents are available in accordance with Department policy and state and federal law and regulations.

Attorney General Opinions:

Budget Amendment Process Inapplicable -- Obligation to Pay Firefighting Expenses: Authority of the Governor to "incur" expenses under this section is distinct from the statutory appropriation found in 10-3-312. Although the budget amendment process is inapplicable to a request by the Department of State Lands (now Department of Natural Resources) to pay the costs associated with the suppression of forest fires, the Legislature may be bound by this section to appropriate money from the general fund to cover valid firefighting expenses. 42 A.G. Op. 123 (1988).

Funding When National Guard Called to Active Duty in Emergency: Expenses incurred in the mobilization of the Montana National Guard when the Guard is mobilized pursuant to a declaration of emergency under 10-3-311 are funded through 10-3-312. 39 A.G. Op. 33 (1981).

Collateral References:

81A C.J.S. States §§ 204 through 207.

53A Am. Jur. 2d Military and Civil Defense § 449.

10-3-312. Maximum expenditure by governor -- appropriation. (1) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed \$16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed \$500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

History: En. Sec. 2, Ch. 409, L. 1971; R.C.M. 1947, 79-2502; amd. Sec. 1, Ch. 626, L. 1983; amd. Sec. 7, Ch. 703, L. 1985; amd. Sec. 2, Ch. 595, L. 1989; amd. Sec. 1, Ch. 256, L. 1991; amd. Sec. 1, Ch. 12, Sp. L. July 1992; amd. Sec. 7, Ch. 176, L. 1995; amd. Sec. 1, Ch. 401, L. 1995; amd. Sec. 4, Ch. 422, L. 1997; amd. Sec. 1, Ch. 55, L. 1999; amd. Sec. 1, Ch. 569, L. 2001; amd. Sec. 2, Ch. 426, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 426 in (1) near middle of first sentence increased maximum emergency appropriation from \$12 million to \$16 million. Amendment effective July 1, 2003.

2001 Amendment: Chapter 569 in (1) near middle of first sentence after "17-7-502, and" inserted "subject to subsection (2)" and inserted second sentence allowing the statutory appropriation to address a state-declared emergency to be used by any designated state agency; in (3) inserted second sentence allowing the statutory appropriation to address a federally declared emergency to be used by any designated state agency; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 55 near end of (1) substituted "exceed \$12 million" for "exceed \$2 million"; deleted former (1)(b) that read: "(b) Whenever an emergency or disaster due to fire is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed \$10 million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire"; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendment Not Codified: Chapter 422 in (1)(a), near end, increased amount to \$4 million from \$2 million; and in (1)(b), after "fire" in two places, inserted "or flood". Amendment effective April 29, 1997,

and terminated July 1, 1997, pursuant to sec. 68(3), Ch. 422, L. 1997.

1995 Amendments: Chapter 176 in (1)(a), at end, inserted "minus any amount appropriated pursuant to 10-3-310 in the same biennium"; and made minor changes in style.

Chapter 401 in (1)(b) increased amount from \$3 million to \$10 million; and made minor changes in style. Amendment effective April 13, 1995.

1992 Special Session Amendment: Chapter 12, Sp. L. July 1992, inserted (1)(b) to statutorily appropriate up to \$3 million per biennium to the Governor's Office for a declared emergency or disaster due to fire; and made minor changes in style. Amendment effective August 6, 1992.

1991 Amendment: In (1) inserted second sentence regarding reinstatement of spending authority when money is recovered.

1989 Amendment: At end of (1) increased from \$1 million to \$2 million the amount authorized for expenditure from the general fund; and inserted (2) relating to appropriation of \$500,000 if a disaster is declared by the U.S. President.

1985 Amendment: Substituted language referring to statutory appropriation of emergency money to the Governor's office for "Whenever an emergency or disaster is declared by the governor, he is authorized to expend from the general fund not to exceed \$1 million in any one biennium".

1983 Amendment: Increased maximum authorized expenditure from \$750,000 to \$1 million.

Attorney General Opinions:

Governor's Declaration Required -- Expenditure of Other Funds: A disaster or emergency must be declared by the Governor before expenses may be incurred under this section. If a disaster is declared by the Governor, the statutory appropriation provided for in this section need not be expended before any other funds may be used for expenses associated with the disaster. 42 A.G. Op. 123 (1988).

Funding When National Guard Called to Active Duty in Emergency: Expenses incurred in the mobilization of the Montana National Guard when the Guard is mobilized pursuant to a declaration of emergency under 10-3-311 are funded through 10-3-312. 39 A.G. Op. 33 (1981).

10-3-313. Temporary housing for disaster victims -- site acquisition and preparation. (1)

Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make such units available to any political subdivision of the state;

(b) to assist any political subdivision of this state which is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or transportation (within or across the state) laws or regulations within this state when by proclamation he declares such suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

(3) Nothing contained in parts 1 through 4 of this chapter shall be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery.

History: En. 77-2312 by Sec. 16, Ch. 335, L. 1977; R.C.M. 1947, 77-2312.

Compiler's Comments:

Language Similar to Model Act: The language of this section is similar to legislation contained in Vol. XXXV, Suggested State Legislation, p. 132, Council of State Governments (1976).

Law Review Articles:

Helping Hands: Aid for Natural Disaster Homeless vs. Aid for Ordinary Homeless, Sar, 7 Stan. L. & Pol'y Rev. 129 (1995).

10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon his determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision.

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenues of the political subdivision are insufficient to meet its operating expenses, including additional emergency- or disaster-related expenses of a political subdivision operation character.

History: En. 77-2313 by Sec. 17, Ch. 335, L. 1977; R.C.M. 1947, 77-2313; amd. Sec. 8, Ch. 703, L. 1985.

Compiler's Comments:

1985 Amendment: Substituted last sentence of (1) referring to statutory appropriation for "and to receive and disburse the proceeds of any approved loan to any applicant political subdivision".

10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize such funds to make grants to any political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section shall not be exercised unless the affected political subdivision, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(b) Whenever the governor provides for clearance of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

History: En. 77-2314 by Sec. 18, Ch. 335, L. 1977; R.C.M. 1947, 77-2314.

Compiler's Comments:

Language Similar to Model Act: The language of this section is similar to legislation contained in Vol

XXXV, Suggested State Legislation, p. 136, Council of State Governments (1976).

Cross References:

Liability of governmental entities generally, Title 2, ch. 9.
Attorney fees for militia members, 10-1-601.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense § 451.

Part 4

Local and Interjurisdictional Planning and Execution

Part Compiler's Comments:

Severability: Section 20, Ch. 335, L. 1977, was a severability section.

Cross References:

Interlocal agreements, Title 7, ch. 11, part 1.

10-3-401. Local and interjurisdictional disaster and emergency plan -- distribution. (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

- (a) the emergency responsibilities of all local agencies, if any, and officials;
- (b) the disaster and emergency chain of command;
- (c) local evacuation authority and responsibility; and
- (d) local authority and responsibility for control of ingress and egress to and from an emergency or disaster area.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(5), (6); amd. Sec. 9, Ch. 430, L. 1983; amd. Sec. 4, Ch. 71, L. 1987.

Compiler's Comments:

1987 Amendment: Inserted (2)(c) referring to local evacuation authority and responsibility; and inserted (2)(d) referring to local authority over ingress and egress to emergency or disaster area.

1983 Amendment: At beginning of (1), substituted "Each political subdivision eligible to receive funds under this chapter shall prepare a local" for "Each local and interjurisdictional agency shall prepare and keep current a local"; near end of (1) substituted "political subdivision" for "agency"; at beginning of (2) substituted "The political subdivision" for "The local or interjurisdictional agency"; and in (2)(a) inserted "if any" after "the emergency responsibilities of all local agencies".

Cross References:

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.
Mutual aid and cooperation, 10-3-202.
State disaster and emergency plan, 10-3-301.

Attorney General Opinions:

Designation of Fire Service Organization as First Responder to Hazardous Materials Incident: The designation of a fire service organization as first responder to a hazardous materials incident is a matter to be included in the state and local disaster and emergency plans. 42 A.G. Op. 104 (1988).

10-3-402. Local emergency -- declaration and termination. (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

(3) An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(1), (2); amd. Sec. 3, Ch. 595, L. 1989.

Compiler's Comments:

1989 Amendment: Deleted former (3) that read: "(3) An emergency proclamation may not continue for longer than 10 days except by consent of the governing body of the political subdivision."

Cross References:

Adoption of emergency resolution by school district trustees, 20-9-163.

10-3-403. Local disaster -- declaration and termination. (1) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

(2) A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(3); amd. Sec. 4, Ch. 595, L. 1989.

Compiler's Comments:

1989 Amendment: Deleted former (2) that read: "(2) A disaster declaration may not continue for longer than 30 days except by consent of the governing body of the political subdivision."

10-3-404. Contents of order -- effect. (1) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, and the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such order or resolution shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division and the agency charged with recording the official records of the political subdivision.

(2) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(4), (5); amd. Sec. 10, Ch. 430, L. 1983.

Compiler's Comments:

1983 Amendment: Near end of (1), deleted ", the local or interjurisdictional agency," after "and shall be filed promptly with the division".

10-3-405. Levying emergency tax -- disposition of surplus. (1) The governing body of the city or town or the governing body of the county, or both, shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the governing body of the city or town shall not exceed 2 mills on the municipality's taxable valuation. The millage levied by the governing body of the county shall not exceed 2 mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body, providing that the sum of the levies for emergencies as set forth in this section shall not exceed 2 mills in any one year.

(4) All levies under this section may be passed only by a unanimous vote of the appropriate body.

(5) Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies.

History: (1) thru (4) En. Sec. 5, Ch. 97, L. 1967; Sec. 11-4305, R.C.M. 1947; (5) En. Sec. 6, Ch. 97, L. 1967; Sec. 11-4306, R.C.M. 1947; R.C.M. 1947, 11-4305(1) thru (4), 11-4306; amd. Sec. 2, Ch. 216, L. 1981.

Compiler's Comments:

1981 Amendment: Substituted "governing body of the" throughout (1) for specific references to "city council" and "board of county commissioners"; and made minor changes in phraseology.

Cross References:

Authority of County Commissioners to transfer funds for emergency relief, 7-31-2101.

Emergency or disaster expenditures authorized by Governor, 10-3-311.

Procedure to make emergency expenditures by school district trustees, 20-9-161 through 20-9-166.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense § 449.

10-3-406. Authority of principal executive officer. Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

(1) direct and compel the evacuation of all or part of the population from an emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2) control the ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

History: En. Sec. 5, Ch. 71, L. 1987; amd. Sec. 5, Ch. 595, L. 1989.

Compiler's Comments:

1989 Amendment: In Introductory clause, before "principal", inserted "Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404" and after "officer" substituted "may" for "shall".

Cross References:

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Part 5

Emergency Resource Management

Part Compiler's Comments:

Language From Model Act: The language of this part parallels that contained in Vol. XXV, Suggested State Legislation, pp. 36 through 41, Council of State Governments (1966).

10-3-501. Policy of state. (1) The legislature recognizes that an enemy attack upon the United States is a possibility; that such an attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an enemy attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an enemy attack. Therefore, it is necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this part.

(2) It is the purpose of this part and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967; Sec. 77-1502, R.C.M. 1947; amd. and redes. 77-2401 by Sec. 19, Ch. 94, L. 1974; R.C.M. 1947, 77-2401; amd. Sec. 44, Ch. 42, L. 1997.

Compiler's Comments:

1997 Amendment: Chapter 42 in (1), in three places, substituted "enemy attack" for "attack"; and made minor changes in style. Amendment effective March 12, 1997.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense § 448.

10-3-502. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Emergency resources management plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids or other forms of warfare upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

10-3-503. Governor's powers and duties. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this part, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and rules to carry out this part within the limits of authority conferred upon him, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967; Sec. 77-1505, R.C.M. 1947; amd. and redes. 77-2403 by Sec. 21, Ch. 94, L. 1974; R.C.M. 1947, 77-2403.

Cross References:

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's proclamation of emergency, 10-3-505.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense §§ 448, 449.

10-3-504. Emergency resource management plan. The plan must provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. The plan is supplemental to the national plan for emergency preparedness adopted by the president of the United States and becomes operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state emergency resources management plan will substitute for and replace the federal program until the time that the federal program becomes effective in the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part); amd. Sec. 45, Ch. 42, L. 1997.

Compiler's Comments:

1997 Amendment: Chapter 42 near end of third sentence, before "plan", inserted "emergency resources management"; and made minor changes in style. Amendment effective March 12, 1997.

Cross References:

State disaster and emergency plan, 10-3-301.

10-3-505. Proclamation of emergency -- effect and termination. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the postattack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) of this section is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations set forth in this part and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take such other action as may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this part have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be considered a complete and sufficient substitute. All existing laws, ordinances, rules, and orders inconsistent with the provisions of this part or any rule or order issued under the authority thereof shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress, however, the proclamation shall terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967; Sec. 77-1506, R.C.M. 1947; amd. and redes. 77-2404 by Sec. 22, Ch. 94, L. 1974; amd. Sec. 14, Ch. 49, L. 1977; R.C.M. 1947, 77-2404.

Compiler's Comments:

Repealing Clause: Section 15, Ch. 49, L. 1977, read: "Section 77-2308, R.C.M. 1947, is repealed."

Cross References:

Declaration of emergency, 10-3-302.

Declaration of disaster, 10-3-303.

Debris and wreckage removal in emergencies or disasters, 10-3-315.

Part inoperative upon convening of Legislature, 10-3-609.

10-3-506. Judicial inquiry of proclamation. Every proclamation and the facts related in the proclamation issued under this part are subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether the action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967; Sec. 77-1507, R.C.M. 1947; amd. and redes. 77-2405 by Sec. 23, Ch. 94, L. 1974; R.C.M. 1947, 77-2405.

Cross References:

Jurisdiction of Supreme Court, Art. VII, sec. 2, Mont. Const.
Original jurisdiction of Supreme Court, 3-2-202.

10-3-507. Penalty for violation of rules. A person violating any of the rules or orders adopted and promulgated under 10-3-505 shall upon conviction be subject to a fine not to exceed \$10,000 or to a term of imprisonment not to exceed 5 years, or both.

History: En. Sec. 8, Ch. 297, L. 1967; Sec. 77-1508, R.C.M. 1947; amd. and redes. 77-2406 by Sec. 24, Ch. 94, L. 1974; R.C.M. 1947, 77-2406.

Collateral References:

53A Am. Jur. 2d Military and Civil Defense § 450.

Part 6

Continuity of Government

Cross References:

Continuity in government, Art. III, sec. 2, Mont. Const.

10-3-601. Citation of part. This part may be cited as "The Continuity in Government Act".

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973; R.C.M. 1947, 82-3801; amd. Sec. 11, Ch. 430, L. 1983.

Compiler's Comments:

1983 Amendment: Deleted "Post-Enemy Attack" before "Continuity in Government Act".

10-3-602. Filling vacancy in governorship. Following an enemy attack, the line of succession to the office of governor shall be extended as provided in Title 2, chapter 16, part 5.

History: En. Sec. 2, Ch. 268, L. 1967; amd. Sec. 47, Ch. 100, L. 1973; R.C.M. 1947, 82-3802; amd. Sec. 6, Ch. 142, L. 1979.

Cross References:

Officers of Senate and House of Representatives, 5-2-221.

Collateral References:

81A C.J.S. States §§ 88, 89.

10-3-603. Filling vacancy in boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack, if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment. Provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; amd. Sec. 48, Ch. 100, L. 1973; R.C.M. 1947, 82-3803.

Cross References:

Filling vacancies created by other causes, 7-4-2106.

10-3-604. Filling vacancy in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967; R.C.M. 1947, 82-3804.

Cross References:

Filling vacancies created by other causes, 7-4-4112.

10-3-605. Filling vacancy for city or town executive. In the event that the executive head of any city or town is unavailable following an enemy attack to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: En. Sec. 5, Ch. 268, L. 1967; R.C.M. 1947, 82-3805.

Cross References:

Filling vacancies created by other causes, 7-4-4112.

10-3-606. Quorum requirement. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute, then those legislators or members of the council, board, or commission available for duty shall constitute the legislature, board, or commission and quorum requirements shall be suspended. Where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967; R.C.M. 1947, 82-3806.

Cross References:

Quorum of Legislature, Art. V, sec. 10, Mont. Const.

Quorum of City or Town Council, 7-5-4121.

Quorum of school district trustees, 20-3-322.

10-3-607. Relocating seat of state government. If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967; R.C.M. 1947, 82-3807; amd. Sec. 12, Ch. 430, L. 1983.

Compiler's Comments:

1983 Amendment: At beginning, deleted "Following an enemy attack in which" and inserted "If"; near beginning substituted "is rendered unsuitable" for "has been rendered unsuitable".

Section Not Codified: Section 82-1310, R.C.M. 1947, providing that the Governor may move the seat of Montana state government in the event of enemy attack has not been codified, as it is redundant with this section. However, section 82-1310, R.C.M. 1947, has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 148, L. 1959.

Cross References:

Continuity in government, Art. III, sec. 2, Mont. Const.

Change of venue of District Court in emergency, 3-5-405.

Proclamation of emergency -- effect and termination, 10-3-505.

Collateral References:

States key 22.

81A C.J.S. States § 38.

10-3-608. Relocating seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as it deems most suitable.

History: En. Sec. 8, Ch. 268, L. 1967; R.C.M. 1947, 82-3808.

Cross References:

Change of venue of District Court in emergency, 3-5-405.

County buildings -- replacement or repair, 7-14-2524.

Proclamation of emergency -- effect and termination, 10-3-505.

10-3-609. Part inoperative upon convening of legislature. The provisions of this part shall become inoperative at the time of the convening of the first legislature following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967; R.C.M. 1947, 82-3809.

Cross References:

Proclamation of emergency -- effect and termination, 10-3-505.

Part 7

Tactical Incident Assistance

10-3-701. Short title. This part may be cited as the "Tactical Incident Assistance Act".

History: En. Sec. 1, Ch. 455, L. 1989.

Compiler's Comments:

Severability: Section 7, Ch. 455, L. 1989, was a severability clause.

Effective Date: Section 8, Ch. 455, L. 1989, provided that this section is effective July 1, 1989.

10-3-702. Definitions. As used in this part, the following definitions apply:

(1) "Jurisdiction" means the jurisdiction of any law enforcement agency within Montana.

(2) "Tactical incident" means any situation in which it is reasonable to expect the possibility of the loss of life or the taking of a hostage unless extraordinary steps are taken. These situations may include but are not limited to:

- (a) a barricaded gunman;
- (b) a person taken hostage;
- (c) arrests in extraordinary circumstances;
- (d) civil disorder;
- (e) terrorist activity;
- (f) protection of a dignitary; and
- (g) courtroom security in extraordinary circumstances.

(3) "Tactical team" means a small group of highly disciplined law enforcement officers trained to provide a quick and ready response to high risk conditions and situations that go beyond the capabilities of normally trained and equipped officers. With specialized training, tactics, and equipment, this small group of officers provides a greater expectation of resolving incidents without loss of property, injury, or loss of life.

History: En. Sec. 2, Ch. 455, L. 1989.

Compiler's Comments:

Severability: Section 7, Ch. 455, L. 1989, was a severability clause.

Effective Date: Section 8, Ch. 455, L. 1989, provided that this section is effective July 1, 1989.

10-3-703. Tactical team aiding another jurisdiction. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may request the assistance of a tactical team from another jurisdiction.

(2) A tactical team called to another jurisdiction has peace officer status in that jurisdiction under the authority of the requesting agency.

History: En. Sec. 3, Ch. 455, L. 1989.

Compiler's Comments:

Severability: Section 7, Ch. 455, L. 1989, was a severability clause.

Effective Date: Section 8, Ch. 455, L. 1989, provided that this section is effective July 1, 1989.

10-3-704. Local agency to contact national guard. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may call the national guard staff duty office for assistance as provided in 10-3-705.

(2) The national guard staff duty officer shall inform the governor of the request.

History: En. Sec. 4, Ch. 455, L. 1989.

Compiler's Comments:

Severability: Section 7, Ch. 455, L. 1989, was a severability clause.

Effective Date: Section 8, Ch. 455, L. 1989, provided that this section is effective July 1, 1989.

10-3-705. Tactical incident -- national guard assistance. (1) Upon request by a local law enforcement agency administrator, the governor may order the national guard to provide transportation services and the use of national guard equipment to the requesting agency tactical team or to tactical teams that are providing assistance to the requesting agency during a tactical incident.

(2) This section does not give the national guard the status or authority of peace officers.

History: En. Sec. 5, Ch. 455, L. 1989.

Compiler's Comments:

Severability: Section 7, Ch. 455, L. 1989, was a severability clause.

Effective Date: Section 8, Ch. 455, L. 1989, provided that this section is effective July 1, 1989.

Cross References:

Authority of Governor to proclaim martial rule, 10-1-106.

Governor's emergency powers and duties generally, 10-3-305.

Part 8

Search and Rescue

10-3-801. Account created for funding search and rescue operations -- rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

- (a) fund transfers pursuant to 15-1-122(3)(f);
- (b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).
- (c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of search and rescue missions conducted by a county sheriff's office at a maximum of \$3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of \$2,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year; and

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training.

History: En. Sec. 1, Ch. 534, L. 2003; amd. Sec. 2, Ch. 542, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 542 in (2)(a) at end substituted "15-1-122(3)(f)" for "15-1-122(3)(g)"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: Section 10(1), Ch. 534, L. 2003, provided that this section is effective January 1, 2004.

Part 9

Intrastate Mutual Aid System

Part Compiler's Comments:

Effective Date: Section 19, Ch. 354, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 21, 2005.

10-3-901. Short title. This part may be cited as the "Statewide Mutual Aid System Act".

History: En. Sec. 1, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(1), Ch. 354, L. 2005, provided that this section applies on [the effective date of this act]. Effective April 21, 2005.

10-3-902. Policy -- purpose. (1) It is the policy of the state that:

(a) available resources should be made available whenever possible and practical to minimize the negative impacts of disasters and emergencies, regardless of the political jurisdiction in this state within which the disaster or emergency occurs and regardless of the political jurisdictions from which a request for assistance arises or from which or to which the resources are made available;

(b) agreements, either formal or informal, written or oral, between or among political subdivisions of this state, that exist or are entered into for the purpose of providing mutual aid in the event of a disaster or emergency should remain options for political subdivisions and should not be infringed upon or in any way affected by the provisions of this part; and

(c) in particular, the provisions of this part do not affect any mutual aid agreement, either formal or informal, written or oral, that is made or that may be made pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703 or a request for assistance or aid or assistance or aid provided or received pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703.

(2) It is the purpose of this part to:

(a) establish an effective and efficient mutual aid system in which a political jurisdiction can choose to participate that can operate separate from yet integrated with other freestanding mutual aid systems or agreements;

(b) provide to political jurisdictions in the state another option for establishing mutual aid agreements and for requesting, providing, and receiving mutual aid; and

(c) allow political jurisdictions maximum flexibility to protect life and property through mutual aid agreements.

History: En. Sec. 2, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(1), Ch. 354, L. 2005, provided that this section applies on [the effective date of this act]. Effective April 21, 2005.

10-3-903. Statewide mutual aid system -- definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana intrastate mutual aid committee created in 10-3-904.

(2) "Disaster" has the meaning provided in 10-3-103.

(3) "Emergency" has the meaning provided in 10-3-103.

(4) "Member jurisdiction" means a political subdivision or a federally recognized Indian tribe that participates in the system.

(5) "System" means the Montana intrastate mutual aid system provided for in 10-3-906.

History: En. Sec. 3, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(1), Ch. 354, L. 2005, provided that this section applies on [the effective date of this act]. Effective April 21, 2005.

10-3-904. Montana intrastate mutual aid committee -- members -- officers -- meetings -- compensation. (1) There is a Montana intrastate mutual aid committee.

(2) All members of the committee must be appointed by and serve at the pleasure of the state emergency response commission established in 10-3-1204.

(3) The committee shall elect from among its members a presiding officer, a vice presiding officer, and any other officers considered necessary or advisable by the committee.

(4) The committee shall meet at least annually and may meet at the call of the presiding officer or as otherwise considered necessary or advisable by two-thirds of the members.

(5) Members of the committee are not entitled to compensation or to reimbursement for expenses incurred for serving on or participating in the activities of the committee. This subsection does not preclude a member jurisdiction from compensating or reimbursing the expenses of a committee member.

History: En. Sec. 4, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(1), Ch. 354, L. 2005, provided that this section applies on [the effective date of this act]. Effective April 21, 2005.

Transition: Section 21, Ch. 354, L. 2005, provided: "Because [section 4] [10-3-904], creating the Montana intrastate mutual aid committee, is effective and applicable on passage and approval [approved April 21, 2005], the state emergency response commission established in 10-3-1204 will not have had the opportunity to appoint the members of the committee. Therefore, the state emergency response commission shall appoint the members of the Montana intrastate mutual aid committee before August 1, 2005."

10-3-905. Montana intrastate mutual aid committee -- duties. The committee shall:

- (1) review the progress and status of intrastate mutual aid;
- (2) assist in developing methods to track and evaluate activation of the system;
- (3) examine issues facing member jurisdictions in the implementation of intrastate mutual aid;
- (4) develop, adopt, and disseminate comprehensive guidelines and procedures that address the

following:

- (a) projected or anticipated costs of establishing and maintaining the system;
- (b) checklists for requesting and providing intrastate mutual aid assistance;
- (c) recordkeeping for all member jurisdictions; and
- (d) procedures for reimbursing the actual and legitimate expenses of a member jurisdiction that responds to a request for aid or assistance through the system; and

(5) adopt any other guidelines or procedures considered necessary by the committee to implement an effective and efficient system.

History: En. Sec. 5, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(1), Ch. 354, L. 2005, provided that this section applies on [the effective date of this act]. Effective April 21, 2005.

10-3-906. Intrastate mutual aid system -- initial participation -- withdrawing. (1) There is a Montana intrastate mutual aid system. The system is composed of and may be described as:

- (a) the member jurisdictions and any action taken by a member jurisdiction pursuant to this part;
- (b) the committee and any action taken by the committee pursuant to this part;
- (c) the guidelines and procedures described in 10-3-905(4);
- (d) any action taken with respect to requesting assistance for an emergency or disaster under this part; and

- (e) any action taken with respect to responding to a request for assistance for an emergency or disaster under this part.

(2) Except as provided in subsection (4), every political subdivision of the state is part of the system.

(3) A federally recognized Indian tribe that is located within the boundaries of the state may be a member jurisdiction upon:

- (a) adoption by the tribal government of a resolution declaring the tribe's desire to be a member jurisdiction; and

- (b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(4) A member jurisdiction may elect not to participate or to withdraw from the system upon:

- (a) adopting a resolution or ordinance declaring that the member jurisdiction elects not to participate in the system; and

- (b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(5) This section does not preclude a member jurisdiction from entering into any other agreement with another political subdivision and does not affect any other agreement to which a political subdivision is a party or may become a party.

History: En. Sec. 6, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(1), Ch. 354, L. 2005, provided that this section applies on [the effective date of this act]. Effective April 21, 2005.

10-3-907. Intrastate mutual aid system -- request for assistance. (1) A member jurisdiction may request assistance from another member jurisdiction:

- (a) to prevent, mitigate, respond to, or recover from an emergency or disaster; or

- (b) in concert with drills or exercises between member jurisdictions.

(2) A request for assistance must be made by or through the presiding officer of the governing body of the member jurisdiction or the chief executive officer or the chief executive officer's designee of a member jurisdiction. A request may be verbal or in writing and is not required to go directly to the division, as defined in 10-3-103. If a request is verbal, the request must be confirmed in writing within 30 days of the date on which the request was made.

History: En. Sec. 7, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(2), Ch. 354, L. 2005, provided that this section applies on October 1, 2005.

10-3-908. Intrastate mutual aid system -- limitation on assistance -- command and control. A member jurisdiction's obligation to provide assistance to prevent, respond to, or recover from an emergency or disaster or in drills or exercises is subject to the following conditions:

(1) A member jurisdiction that responds to a request for assistance from a requesting member jurisdiction may withhold resources to the extent necessary to provide reasonable protection and services for the responding jurisdiction.

(2) The personnel of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction for purposes that include medical protocols, standard operating procedures, and other protocols; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

(3) The assets and equipment of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

History: En. Sec. 8, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(2), Ch. 354, L. 2005, provided that this section applies on October 1, 2005.

10-3-909. Intrastate mutual aid system -- portability of bona fides. If a person or entity holds a license, certificate, permit, or similar documentation that evidences the person's or entity's qualifications in a professional, mechanical, or other skill and the assistance of the person or entity is requested by a member jurisdiction, the person or entity is:

(1) considered to be licensed, certified, permitted, or otherwise documented in the member jurisdiction that requests assistance for the duration of the emergency or disaster or of the drills or exercises; and

(2) subject to any legal limitations or conditions prescribed by the governing body or chief executive of the member jurisdiction that receives the assistance.

History: En. Sec. 9, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(2), Ch. 354, L. 2005, provided that this section applies on October 1, 2005.

10-3-910. Intrastate mutual aid system -- reimbursement -- dispute resolution. (1) A requesting member jurisdiction shall reimburse each member jurisdiction that responds to a request for aid or assistance and renders aid under the system unless the member jurisdiction rendering aid donates all or a portion of the cost of the assistance to the requesting member jurisdiction.

(2) A request for reimbursement must be in accordance with procedures developed by the committee.

(3) If a dispute regarding reimbursement arises between a party that requested assistance under the system and a party that provided assistance under the system, the involved parties shall make every effort to resolve the dispute within 30 days of written notice of the dispute given by the party asserting noncompliance to the other party.

(4) (a) If the dispute is not resolved within 90 days from the date of the notice, either party may request that the dispute be resolved through arbitration.

(b) All arbitration occurring under this section must be conducted pursuant to the commercial arbitration rules and mediation procedures of the American arbitration association as the rules and procedures exist on the date of notification described in subsection (3).

History: En. Sec. 10, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(2), Ch. 354, L. 2005, provided that this section applies on October 1, 2005.

10-3-911. Intrastate mutual aid system -- workers' compensation coverage. (1) If a person is an employee of a member jurisdiction that responds to a request for assistance from a member jurisdiction and the person sustains injury in the course of providing the requested assistance, the person is entitled to all applicable benefits, including workers' compensation benefits, normally available to the person as an employee of the member jurisdiction that employs the person.

(2) If the person's injury results in the person's death, the person's estate must receive any additional state and federal benefits that may be available for death in the line of duty.

History: En. Sec. 11, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(2), Ch. 354, L. 2005, provided that this section applies on October 1, 2005.

10-3-912. Liability -- immunity. (1) All activities performed pursuant to a request for assistance as provided for in this part are considered to be governmental functions.

(2) Except as provided in 10-3-911, a person responding to a request for assistance who is under the operational control of the requesting member jurisdiction, as provided for in 10-3-908, is considered for the purposes of liability to be an employee of the requesting member jurisdiction.

(3) Except in the case of willful misconduct, gross negligence, or bad faith, the member jurisdiction or an employee of the member jurisdiction is immune from liability for the death of or injury to any person or for damage to property if the member jurisdiction or the employee of the member jurisdiction is complying with or attempting to comply with the system.

History: En. Sec. 12, Ch. 354, L. 2005.

Compiler's Comments:

Applicability: Section 20(2), Ch. 354, L. 2005, provided that this section applies on October 1, 2005.

Part 10

Emergency Management Assistance Compact

Part Compiler's Comments:

Effective Date: Section 6, Ch. 175, L. 1999, provided: "[This act] is effective on passage and approval." Approved March 25, 1999.

Cross References:

Intergovernmental cooperation, Title 10, ch. 3, part 2.

10-3-1001. Enactment -- provisions. The Emergency Management Assistance Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

Article I - Definitions, Purposes, and Authorities

- (1) As used in this compact, the following definitions apply:
 - (a) "Party states" means the states that enact this compact.
 - (b) "States" means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.
- (2) This compact is made and entered into by and between the participating party states that enact this compact.
- (3) The purpose of this compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is declared by the governor of an affected state, whether arising from natural disaster, technological hazard, human-caused disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.
- (4) This compact also provides for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, those actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between party states.

Article II - General Implementation

- (1) Each party state recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each party state further recognizes that there will be emergencies that require immediate access and present procedures to apply outside resources to make a prompt and effective response to an emergency. This is because few, if any, individual states have all the resources that they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.
- (2) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state is the underlying principle on which all articles of this compact must be understood.
- (3) On behalf of the governor of each party state, the legally designated state official who is assigned responsibility for emergency management is responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III - Party State Responsibilities

(1) It is the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating those plans and in carrying them out, the party states, insofar as practical, shall:

(a) review individual party state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies that the party states might jointly suffer, whether because of natural disaster, technological hazard, human-caused disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;

(b) review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(c) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(d) assist in warning communities adjacent to or crossing the state boundaries;

(e) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(f) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(g) provide, to the extent authorized by law, for temporary suspension of any statutes.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement apply only to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If a request is verbal, the request must be confirmed in writing within 30 days of the verbal request. Requests must provide the following information:

(a) a description of the emergency service function for which assistance is needed, such as fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(b) the amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time that will be needed; and

(c) the specific place and time for staging of the assisting party state's response and a point of contact at that location.

(3) There must be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV - Limitations

A party state requested to render mutual aid or to conduct exercises and training for mutual aid shall take action necessary to provide and make available the resources covered by this compact in accordance with the terms of this compact. However, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for that state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except the power of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the party state in which they are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or subsequent to commencement of exercises or training for mutual aid and must continue so long as the exercises or training for mutual aid is in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

Article V - Licenses and Permits

If a person holding a license, certificate, or other permit issued by a party state evidencing the meeting of qualifications for professional, mechanical, or other skills is requested for assistance by the receiving party state, that person is considered licensed, certified, or permitted by the party state requesting assistance to render aid involving that skill to meet a declared emergency or disaster. However, the person holding the license, certificate, or permit is subject to limitations and conditions that the governor of the requesting party state may prescribe by executive order or other means.

Article VI - Liability

Officers or employees of a party state rendering aid in another party state pursuant to this compact are considered agents of the requesting state for tort liability and immunity purposes. A party state or its officers or employees rendering aid in another party state pursuant to this compact are not liable on account of an act taken or omission made in good faith on the part of the forces giving that aid or on account of the maintenance or use of any equipment or supplies in connection with giving that aid. Good faith, as used in this article, does not include willful misconduct, gross negligence, or recklessness.

Article VII - Supplementary Agreements

Because it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party to this compact, this compact contains elements of a broad base common to all states. This compact does not prevent a party state from making supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may include provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII - Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of those forces in case those members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX - Reimbursement

A party state rendering aid in another party state pursuant to this compact must be reimbursed by the party state receiving that aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with a request. However, an aiding party state may assume in whole or in part a loss, damage, expense, or other cost or may loan equipment or donate services to the receiving party state without charge or cost. Two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses are not reimbursable under this provision.

Article X - Evacuation

(1) Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to require those plans, must be worked out and maintained between the party states and the emergency management or emergency services directors of the various jurisdictions where any type of incident requiring evacuations might occur. The plans must be put into effect by request of the party state from which evacuees come and must include:

- (a) the manner of transporting those evacuees;
- (b) the number of evacuees to be received in different areas;
- (c) the manner in which food, clothing, housing, and medical care will be provided;
- (d) the registration of the evacuees;
- (e) the providing of facilities for the notification of relatives or friends of evacuees;
- (f) the forwarding of evacuees to other areas or the bringing in of additional materials or supplies; and
- (g) all other relevant factors.

(2) The plans referred to in subsection (1) must provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and for similar items. The expenditures must be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of the evacuees.

Article XI - Implementation

(1) This compact becomes operative immediately upon its enactment into law by any two states. After it becomes operative, this compact is effective in any other state upon its enactment by that other state.

(2) A party state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal does not take effect until 30 days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. Withdrawal does not relieve the withdrawing state from obligations assumed under this compact prior to the effective date of withdrawal.

(3) Authenticated copies of this compact and any supplementary agreements as may be entered into must, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

Article XII - Validity

This compact must be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional or if the applicability of a provision to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons and circumstances are not affected.

Article XIII - Additional Provisions

This compact does not authorize or permit the use of military force by the national guard of a party state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under 18 U.S.C. 1385.

History: En. Sec. 1, Ch. 175, L. 1999.

10-3-1002. Compact administrator. The administrator of the disaster and emergency services division of the department of military affairs is the administrator of the compact provided for in 10-3-1001.

History: En. Sec. 2, Ch. 175, L. 1999.

10-3-1003. Supplementary agreements. The compact administrator provided for in 10-3-1002 may enter into agreements with other officials in other states, as provided in Article VII of this compact, and in Montana that are necessary to implement the compact.

History: En. Sec. 3, Ch. 175, L. 1999.

Part 11

Interstate Emergency Services

Part Compiler's Comments:

Effective Date: Section 13, Ch. 5, L. 1989, provided that this part is effective February 4, 1989.

Cross References:

Intergovernmental cooperation, Title 10, ch. 3, part 2.

10-3-1101. Short title. This part shall be known and may be cited as the "Interstate Emergency Services Mutual Aid Act".

History: En. Sec. 1, Ch. 5, L. 1989.

10-3-1102. Purpose. It is the purpose of this part to permit one or more fire protection services, emergency medical care providers, or local government subdivisions of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States in order to facilitate and coordinate efficient, cooperative firefighting efforts directed toward protection of life and property in areas transcending state boundaries that, due to geographic remoteness, population sparsity, and economic or other factors, are in need of such services.

History: En. Sec. 2, Ch. 5, L. 1989.

10-3-1103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Emergency medical care provider" means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) "Fire protection service" means a paid or volunteer fire department, fire company, or other fire suppression entity organized under the laws of this state, any party state, or an agency of the government of the United States.

(3) "Local government subdivision" means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) "Mutual aid agreement" or "agreement" means an agreement, consistent with the purposes of this part, by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States.

(5) "Party emergency service" means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as set forth in this part.

History: En. Sec. 3, Ch. 5, L. 1989.

10-3-1104. Authorization to enter agreement -- general content -- authority. (1) Any one or more fire protection services, emergency medical care providers, or local government subdivisions of this state may enter into a mutual aid agreement with any one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States to provide emergency services to the area covered by the agreement. The agreement must be authorized and approved by the governing body of each party to the agreement that is not an agency of the United States government.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) A mutual aid agreement grants a fire protection service or emergency medical care provider of this state authority to operate outside of the state and grants authority for a fire protection service or emergency medical care provider of another state or the United States to operate within this state as if the fire service or emergency medical care provider were organized and operated under the laws of this state.

History: En. Sec. 4, Ch. 5, L. 1989.

10-3-1105. Detailed content of agreement. The agreement authorized by 10-3-1104 must specify the following:

- (1) the purpose of the agreement;
- (2) the precise organization, composition, and nature of any separate legal entity created by the agreement;
- (3) the duration of the agreement;
- (4) the manner of financing the agreement and establishing and maintaining a budget therefor;
- (5) a provision for administering the agreement, which may include creation of a joint board responsible for such administration;
- (6) the exact chain of command or delegation of authority to be followed by party emergency services acting under the provisions of the agreement;
- (7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and
- (8) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

History: En. Sec. 5, Ch. 5, L. 1989.

10-3-1106. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the state attorney general.

(2) The attorney general shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the appropriate governing bodies of the fire protection services, emergency medical care providers, and local government subdivisions.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved.

History: En. Sec. 9, Ch. 5, L. 1989.

10-3-1107. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: En. Sec. 10, Ch. 5, L. 1989.

Cross References:

Duties of Secretary of State, 2-15-401.

Role and duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

10-3-1108 through 10-3-1110 reserved.

10-3-1111. Agreement not to relieve agency of duties. No agreement made under this part may relieve any fire protection service, emergency medical care provider, or local government subdivision of this state of a duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: En. Sec. 7, Ch. 5, L. 1989.

Cross References:

Liability of governmental entities generally, Title 2, ch. 9.

Limitations on liability for emergency care, 27-1-714.

Emergencies and special situations, 41-1-405.

10-3-1112. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any fire protection service, emergency medical care provider, or local government subdivision of this state to exercise a power that it is not otherwise authorized to exercise.

History: En. Sec. 8, Ch. 5, L. 1989.

10-3-1113. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more fire protection services, emergency medical care providers, or local government subdivisions of this state and one or more fire protection services, emergency medical care providers, or local government subdivisions of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any fire protection service, emergency medical care provider, or local government subdivision whose default, failure, performance, or other conduct caused or contributed to a liability incurred by the state.

History: En. Sec. 6, Ch. 5, L. 1989.

10-3-1114. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: En. Sec. 12, Ch. 5, L. 1989.

10-3-1115. Authorization to appropriate funds for purpose of agreement. A fire protection service, emergency medical care provider, or local government subdivision of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: En. Sec. 11, Ch. 5, L. 1989.

Part 12

Response to Hazardous Material Incidents

Part Compiler's Comments:

Severability: Section 18, Ch. 270, L. 1995, was a severability clause.

Effective Date: Section 19, Ch. 270, L. 1995, provided that this part is effective on passage and approval. Approved March 28, 1995.

Cross References:

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Nuclear regulation, Title 50, ch. 79.

Montana Hazardous Waste and Underground Storage Tank Act, Title 75, ch. 10, part 4.

State participation in CERCLA, Title 75, ch. 10, part 6.

Comprehensive Environmental Cleanup and Responsibility Act, Title 75, ch. 10, part 7.

Western Interstate Nuclear Compact, 90-5-201.

10-3-1201. Short title. This part may be cited as the "Montana Response to Hazardous Material Incidents Act".

History: En. Sec. 1, Ch. 270, L. 1995.

10-3-1202. Purpose. It is the purpose of this part to:

(1) provide that adequate hazardous material emergency response capability exists in the state in order to protect the health and safety of Montana citizens and the environment;

(2) delineate those state agencies responsible for responding to a hazardous material incident;

(3) provide for the control and management of incidents;

(4) provide for the cooperation of other state agencies and local governments in incident management; and

(5) provide for the formulation of a comprehensive, statewide incident management and hazardous material response support plan.

History: En. Sec. 2, Ch. 270, L. 1995.

10-3-1203. Definitions. As used in this part, the following definitions apply:

- (1) "Commission" means the state emergency response commission.
- (2) "Division" means the division of disaster and emergency services in the department of military affairs.
- (3) "Duration of response" means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.
- (4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.
- (5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.
- (6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.
(b) The term does not include radioactive material.
- (7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.
- (8) "Incident commander" means the person who is designated in the local emergency operations plan.
- (9) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.
- (10) "Local emergency response authority" means the agency designated by the city, county, or commission to be responsible for the management of an incident at the local level.
- (11) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.
- (12) "Plan" means the Montana incident management and hazardous material response support plan.
- (13) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.
(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.
- (14) "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.
- (15) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment.

History: En. Sec. 3, Ch. 270, L. 1995; amd. Sec. 2, Ch. 520, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 520 inserted definition of incident commander; in definition of local emergency response authority substituted "agency" for "person or persons"; and made minor changes in style. Amendment effective October 1, 1999.

10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 27 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part. The commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency authorities to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904.

(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part.

History: En. Sec. 4, Ch. 270, L. 1995; amd. Sec. 1, Ch. 45, L. 1999; amd. Sec. 1, Ch. 37, L. 2003; amd. Sec. 13, Ch. 354, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 354 inserted (14) requiring that the commission appoint the members of the Montana intrastate mutual aid committee; and made minor changes in style. Amendment effective April 21, 2005.

Applicability: Section 20(1), Ch. 354, L. 2005, provided that this section applies on [the effective date of this act]. Effective April 21, 2005.

2003 Amendment: Chapter 37 in (1) in second sentence increased the number of commission members from 19 to 27 and in third sentence after "air force" deleted "state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state", after "department of justice" deleted "department of fish, wildlife, and parks", inserted "the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns", and at end after "governor" deleted "and any other representatives that the governor appoints"; inserted (13) describing the duties of the commission acting as an all-hazard advisory board; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 45 in (1) in second sentence reduced number of appointed members from 20 to 19, in third sentence near middle substituted representative from department of environmental quality for representative from department of public health and human services and deleted representative from department of administration, inserted fourth sentence establishing 4-year terms and allowing reappointment, and in sixth sentence substituted requirement for two copresiding officers for former requirement for one presiding officer; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 2, Ch. 45, L. 1999, provided: "[Section 1] [amending 10-3-1204] applies to members of the state emergency response commission who are members on October 1, 1999."

Code Commissioner Change: Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

10-3-1205 and 10-3-1206 reserved.

10-3-1207. Commission budget and expenditures. (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) payment of workers' compensation premiums for coverage of state hazardous material incident response team members;

(b) training activities for the state hazardous material incident response team;

(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan; and

(d) any remaining funds to be used at the discretion of the commission for programs related to the plan.

History: En. Sec. 5, Ch. 270, L. 1995.

10-3-1208. Local emergency response authorities -- designation. (1) The governing body of each incorporated city and county shall designate the local emergency response authority for incidents that occur within its jurisdiction.

(2) Local emergency response authority members must be trained in hazardous material incident response in compliance with 29 CFR 1910.120(q), as amended.

(3) An incorporated city may, with the mutual consent of the county, designate the county as its local emergency response authority and participate in the local emergency operations plan for incident response.

(4) If an incident occurs in an area in which local emergency response authority has not been designated, the presiding officer of the board of county commissioners must be the local emergency response authority for the incident for the purposes of this part.

History: En. Sec. 6, Ch. 270, L. 1995.

10-3-1209. Local emergency response authorities -- powers and duties. (1) Every local emergency response authority designated pursuant to this part shall respond to incidents occurring within its jurisdiction according to the local emergency operations plan. The local emergency response authority shall also respond to an incident that initially occurs within its jurisdiction but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident shall perform the initial emergency response duties.

(2) Each local emergency response authority shall define in writing its incident management system and specifically define the agency that will be the incident commander.

(3) The incident commander shall declare that the emergency situation associated with an incident has ended when the acute threat to public health and safety or to the environment has been sufficiently addressed.

History: En. Sec. 7, Ch. 270, L. 1995.

10-3-1210. Controlling provisions for state of emergency -- liability of responsible persons. In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as the result of an incident, the provisions of 10-3-303 govern.

History: En. Sec. 8, Ch. 270, L. 1995.

10-3-1211. Notification of release. (1) A person responsible for reporting a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release, other than a permitted release, notify the division of the release.

(2) The division shall notify the commission of releases or threatened releases as defined in the plan.

(3) The division shall immediately notify the department of environmental quality of any release reported and who will respond according to the plan.

(4) Any person who does not make notification in accordance with the provisions of this section is liable for a civil penalty not to exceed \$10,000 for each day the violation continues to a maximum of \$100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected must be deposited in the environmental contingency account provided for in 75-1-1101.

(5) Compliance with the reporting requirements of this section does not relieve any person of the obligation to report the same incident under any other applicable state or federal law, regulation, or other requirement.

History: En. Sec. 9, Ch. 270, L. 1995.

Compiler's Comments:

Code Commissioner Change: Pursuant to sec. 568, Ch. 546, L. 1995, the Code Commissioner substituted Department of Environmental Quality for Department of Health and Environmental Sciences.

10-3-1212 and 10-3-1213 reserved.

10-3-1214. Right to reimbursement. (1) State hazardous material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the state hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the state hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in this part and only if adequate funds are available.

History: En. Sec. 10, Ch. 270, L. 1995.

10-3-1215. Deficiency warrants for reimbursement of response costs. (1) (a) The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken pursuant to this part.

(b) The costs of routine firefighting procedures are not reimbursable costs under this part.

(2) Reimbursement must be in accordance with the schedule defined in the plan.

(3) The decision of the governor is final and nonappealable.

(4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

History: En. Sec. 11, Ch. 270, L. 1995.

10-3-1216. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission, the state hazardous material incident response team, and the local emergency response authority, this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to this part.

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.

History: En. Sec. 12, Ch. 270, L. 1995; amd. Sec. 3, Ch. 520, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 520 in (6) after "team" inserted "and the local emergency response authority"; and made minor changes in style. Amendment effective October 1, 1999.

Cross References:

Costs, Title 25, ch. 10.

Availability of remedies -- liability, Title 27, ch. 1.

Nuisances, Title 27, ch. 30.

Environmental contingency account, 75-1-1101.

10-3-1217. Liability of persons and response team members rendering assistance. (1) The following are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material:

- (a) the state or a political subdivision of the state;
- (b) the commission;
- (c) the local emergency response authority;
- (d) the state hazardous material incident response team;
- (e) a private emergency response team dispatched by the state, a political subdivision of the state, or a local or tribal emergency response authority for emergency response activities; and
- (f) an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e), except for willful misconduct or gross negligence.

(2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss.

(3) A person becomes a member of the state hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location.

History: En. Sec. 13, Ch. 270, L. 1995; amd. Sec. 4, Ch. 520, L. 1999; amd. Sec. 1, Ch. 517, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 517 inserted (1)(e) relating to private emergency response team dispatched by governmental entity for emergency response activities; in (1)(f) after "gross negligence" deleted "bad faith"; and made minor changes in style. Amendment effective April 25, 2003.

1999 Amendment: Chapter 520 in first sentence at beginning inserted "The state or a political subdivision of the state", after "commission" inserted "the local emergency response authority", after "team" inserted "or, except for willful misconduct, gross negligence, or bad faith, an employee, representative, or agent of the state or a political subdivision of the state, the commission, the local emergency response authority, and the state hazardous material incident response team", and near end after "release" inserted "or remedial action resulting from the release or threatened release"; in third sentence after "contacted" inserted "dispatched, or requested"; and made minor changes in style. Amendment effective October 1, 1999.

10-3-1218. Required assistance in hazardous material incident. An owner or agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person transporting a hazardous material involved in an incident, and a person owning or occupying property involved in an incident shall assist the state as requested by the incident commander in responding to an emergency situation associated with the incident as may be necessary to address an acute threat to public health or safety or to the environment until the incident commander declares that the emergency situation is over.

History: En. Sec. 14, Ch. 270, L. 1995.

Part 13

Montana High-Level Radioactive Waste and Transuranic Waste Transportation Act

Part Compiler's Comments:

Severability: Section 12, Ch. 560, L. 2003, was a severability clause.

Effective Date: Section 13, Ch. 560, L. 2003, provided that this part is effective January 1, 2004.

10-3-1301. Short title. This part may be cited as the "Montana High-Level Radioactive Waste and Transuranic Waste Transportation Act".

History: En. Sec. 1, Ch. 560, L. 2003.

10-3-1302. Purpose. The purpose of this part is to enhance the safety of Montana's citizens by requiring a special permit, inspections, and monitoring of shipments of high-level radioactive waste and transuranic waste that travel through Montana by motor carrier or railroad.

History: En. Sec. 2, Ch. 560, L. 2003.

10-3-1303. Definitions. As used in this part, the following definitions apply:

(1) "High-level radioactive waste" means:

(a) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste that contains fission products in sufficient concentrations;

(b) irradiated reactor fuel; or

(c) other highly radioactive waste material that the U.S. nuclear regulatory commission has determined by rule requires permanent isolation.

(2) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(3) "Transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram or in other concentrations that the U.S. nuclear regulatory commission may prescribe.

History: En. Sec. 3, Ch. 560, L. 2003.

10-3-1304. Radioactive waste transportation monitoring, emergency response, and training account -- purpose -- disbursement. (1) There is an account in the state special revenue fund to be known as the radioactive waste transportation monitoring, emergency response, and training account administered by the disaster and emergency services division of the department of military affairs.

(2) The money deposited into this account by the department of transportation pursuant to 10-3-1307 may be used only for the following purposes:

(a) to reimburse the highway patrol for expenses incurred in monitoring or providing escorts for motor carriers transporting high-level radioactive waste or transuranic waste through the state;

(b) to provide funding for training local emergency response personnel in handling radioactive waste accidents, spills, and other related emergencies; and

(c) to reimburse local emergency response entities for costs incurred in the event that an accident, spill, or other related emergency occurs.

(3) Prior to rulemaking provided for under 10-3-1309(3), the disaster and emergency services division of the department of military affairs shall coordinate with the public service commission and the department of transportation to provide to an appropriate legislative interim committee prior to the 59th legislature a plan that prioritizes prospective disbursement of money in the account described in subsection (1).

History: En. Sec. 4, Ch. 560, L. 2003.

10-3-1305. Responsibilities of owner. (1) Prior to shipping high-level radioactive waste or transuranic waste through the state, an owner and the originating shipper if not the owner shall provide to the transporter and to the disaster and emergency services division, within limits set by the regulating federal authority:

- (a) a shipment description, including type of waste;
- (b) a safety plan, which must be submitted to the disaster and emergency services division and which must include:

- (i) the specifications of casks being used to transport the radioactive waste, including how the casks have been tested and certified;

- (ii) proof of training of an owner's escorts for emergency situations, including accidents;

- (iii) the intended route;

- (iv) all safety precautions to be taken to prevent an accident; and

- (v) emergency plans for threats to safety;

- (c) proof of insurance or an indemnity bond. If the owner and the originating shipper if not the owner is covered by a federal insurance program for the transport of radioactive material, proof of coverage by that program is sufficient. If a federal insurance program does not cover the owner, the owner shall provide proof of a bond or indemnity insurance coverage as required by the regulating federal authority.

- (d) proof of a radiotelephone or other working, two-way voice communications device approved by the nuclear regulatory commission for the main transporter and for each escort vehicle.

(2) An owner or the originating shipper if not the owner may not transport through the state any high-level radioactive waste or transuranic waste that is not properly sealed in a cask approved by the regulating federal authority.

History: En. Sec. 5, Ch. 560, L. 2003.

10-3-1306. Transportation of radioactive waste through state -- notification -- responsibilities of division. (1) A person or entity may not ship high-level radioactive waste or transuranic waste through the state by rail or motor carrier unless the person or entity first notifies the disaster and emergency services division and the department of transportation, pays the appropriate fees, and obtains a permit.

(2) Upon receiving the notification required under subsection (1), the disaster and emergency services division shall notify the highway patrol, the public service commission, or other agencies as appropriate.

(3) The disaster and emergency services division shall reimburse the highway patrol for expenses incurred in monitoring or escorting motor carriers, as provided in 10-3-1308, from money collected in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

History: En. Sec. 6, Ch. 560, L. 2003.

10-3-1307. Responsibilities of department of transportation -- assessment and collection of fees -- issuance of permits -- inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of \$2,500 must be assessed for each cask designed for transport by truck; and
(b) a fee of \$4,500 must be assessed for the first cask designed for transport by rail and a fee of \$3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and 61-3-321(13) and 61-10-127 do not apply.

History: En. Sec. 7, Ch. 560, L. 2003; amd. Sec. 8, Ch. 596, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 596 in (7) substituted "61-3-321(13)" for "61-3-321(5)". Amendment effective January 1, 2006.

10-3-1308. Responsibilities of highway patrol -- monitoring of motor carriers -- billing. (1) After receiving notification from the disaster and emergency services division that a motor carrier will be transporting high-level radioactive waste or transuranic waste through the state, the highway patrol shall establish a plan for monitoring the shipment.

(2) Monitoring a shipment by motor carrier may include escorting the vehicle through the state, establishing checkpoints, shadowing the vehicle, electronically following the vehicle's movements, or any other method determined by the highway patrol to be effective and safe.

(3) The highway patrol shall coordinate inspection of the motor carrier with the department of transportation's motor carrier services division.

(4) The highway patrol shall determine the cost that it has incurred in monitoring each motor carrier and shall submit a bill for reimbursement to the disaster and emergency services division for payment out of the account established in 10-3-1304(1) according to the priorities established in 10-3-1304(3).

(5) The routing of the transport by motor carrier of high-level radioactive waste and transuranic waste must be determined by the department of transportation and the appropriate regulating federal authority.

History: En. Sec. 8, Ch. 560, L. 2003.

10-3-1309. Responsibilities of public service commission -- inspection of rails and trains -- agreements with neighboring states and provinces -- rulemaking. (1) After receiving notification from the disaster and emergency services division that high-level radioactive waste or transuranic waste will be shipped by railroad through the state, the public service commission shall establish a plan for inspecting the rails and the trains, as authorized in Title 69, chapter 14, part 2, that will be involved in the transportation of the waste. The plan must include but is not limited to:

- (a) coordination with the federal railroad administration on track and rolling stock inspections;
- (b) inspection and approval by a federally certified inspector no later than 1 week prior to shipment; and
- (c) a requirement that trains carrying radioactive waste or transuranic waste may not travel at greater than the speed required by federal regulations.

(2) The public service commission may enter into reciprocal agreements with adjacent states and bordering Canadian provinces that Montana's inspectors may inspect trains while they are stopped in those states or provinces before they cross the Montana border.

(3) The public service commission shall, in cooperation with the department of transportation, the disaster and emergency services division, and the highway patrol, establish rules to carry out the provisions of this part. The rules must address:

- (a) the process by which local authorities will be notified when a motor carrier or a train carrying high-level radioactive waste or transuranic waste is approaching their jurisdictions;
- (b) which local authorities will receive notification;
- (c) the process by which local governments and local emergency response entities may apply for and receive training and reimbursement money from the radioactive waste transportation monitoring, emergency response, and training account, as provided in 10-3-1304;
- (d) the criteria for qualifying to receive money from the account;
- (e) acceptable means for monitoring a train that is carrying high-level radioactive waste or transuranic waste; and
- (f) other processes or procedures that the public service commission, the department of transportation, the disaster and emergency services division, and the highway patrol determine are necessary to efficiently carry out the provisions of this part and to ensure the safe transportation of high-level radioactive waste or transuranic waste through Montana.

History: En. Sec. 9, Ch. 560, L. 2003.

10-3-1310. Penalty. An owner found to be in violation of the provisions of 10-3-1305 through 10-3-1309 shall be fined an amount of not more than \$100,000 for each violation. In the case of an accidental spill of a cask containing transuranic waste or leakage of high-level radioactive waste, the penalty is in addition to any other liability. The department of justice is responsible for imposing and determining the amount of a fine.

History: En. Sec. 10, Ch. 560, L. 2003.